

1 IN THE UNITED STATES DISTRICT COURT
2 FOR
3 THE MIDDLE DISTRICT OF ALABAMA
4

5 THE UNITED STATES
6 OF AMERICA

7 vs.

CRIMINAL ACTION NO.
03-CR-63

8 WENDALL JEFFERSON
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16 SENTENCING PROCEEDINGS
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21 BEFORE: The Hon. Myron H. Thompson

22 HEARD AT: Montgomery, Alabama

23 HEARD ON: December 4, 2003

24 APPEARANCES: Susan Redmond, Esq.

25 Connie Jo Cooper, Esq.

1 WHEREUPON, THE FOLLOWING PROCEEDINGS WERE HEARD BEFORE
2 THE HON. MYRON H. THOMPSON ON DECEMBER 4, 2003 AT THE
3 UNITED STATES COURTHOUSE IN MONTGOMERY, ALABAMA:

4 THE COURT: The Court calls the case of
5 United States of America v. Wendell Jefferson,
6 criminal action number 03-063.

7 Please have him come forward.

8 MS. COOPER: You want Mr. Jefferson also,
9 sir?

10 THE COURT: Yes, please.

11 Now this is Mr. Jefferson?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Mr. Wendell Jefferson. And
14 you're here with your attorney, Miss Cooper?

15 MS. COOPER: Yes, sir.

16 THE COURT: Now, Mr. Jefferson, have you
17 reviewed the Presentence Report, including any
18 revisions that may have been made after the initial
19 disclosure?

20 MS. COOPER: Yes, sir, he and I have
21 reviewed the Presentence Report.

22 THE COURT: Is that correct, Mr. Jefferson?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Was there a plea agreement here?

25 MS. COOPER: Yes, Your Honor.

1 THE COURT: Would you state the plea
2 agreement.

3 MS. REDMOND: Judge, Susan Redmond for the
4 Government.

5 The plea agreement entered in this case
6 filed on July 2nd, 2003 is pursuant to 1(C)(1)(a).
7 The Government's provisions, Your Honor, were that on
8 entering a plea of guilty by the defendant to all
9 counts of the indictment -- that's one, two, three,
10 four, five and six -- the Government will agree,
11 pursuant to Rule 1(c)(1)(a), that the defendant's
12 wife, Jennifer Faulk, would not be indicted by the
13 Government for conduct arising out of the indictment.

14 We reserve the right to inform the Court and
15 the Probation Department of all facts pertinent to the
16 sentencing process, including all relevant information
17 concerning the offenses and the sentencing background.

18 The defendant's provisions were to plead
19 guilty to counts one, two, three, four, five and six
20 of the indictment.

21 There was a provision that he did not waive
22 his right to disposition as to the issues raised in
23 the suppression motion. That recommendation at that
24 time, Your Honor, had not been completed by the Court.
25 We were working on a plea agreement. And his two

1 other provisions were to forfeit any and all property
2 constituting or derived from any proceeds obtained as
3 a result of the violations of the indictment, and to
4 forfeit the firearms and ammunition described within
5 the counts of the indictment as well, Your Honor.

6 THE COURT: Okay. So this is -- This plea
7 agreement does not require the Court to impose a
8 specific sentence?

9 MS. REDMOND: That's correct, Your Honor.

10 THE COURT: Is that correct, Miss Cooper?

11 MS. COOPER: Judge, that is our
12 understanding. We did have some objections to that.

13 THE COURT: Right.

14 I understand the Government has no
15 objections?

16 MS. REDMOND: That is correct, Your Honor.

17 THE COURT: And the defendant has one
18 objection?

19 MS. COOPER: That's correct, Your Honor.

20 THE COURT: And that objection is that
21 because the defendant committed counts four and six
22 simultaneously, count six should not be deemed a
23 successive conviction under 924(C)(1) for sentencing
24 purposes?

25 MS. COOPER: Yes, sir, that is part of our

1 objection.

2 And one other point that I would like to
3 make is based upon the written plea agreement, Judge.
4 Upon execution of the plea agreement, counts four and
5 six, it states that the sentence would be not less
6 than five years. Judge, whether that was
7 miscommunication between me and Miss Redmond, I wanted
8 to state for the record that my client, it's my
9 understanding that his understanding of the plea
10 agreement would be that he took it that those would
11 carry a consecutive sentence -- it was my client's
12 understanding that upon execution of the plea
13 agreement for counts four and six, those two counts
14 would carry a consecutive term to the other counts of
15 between five and ten years and not less than
16 twenty-five years.

17 THE COURT: Okay. Five and ten years and not
18 less than twenty-five years, is count six. Count six
19 says it's not less than twenty-five years if it's a
20 subsequent offense.

21 MS. COOPER: That is what the presentence
22 investigative report states, but that is not what the
23 plea agreement states, Your Honor.

24 THE COURT: I understand that, but you're
25 saying your client understood that it was for both

1 counts it would be not less than five to ten years,
2 you said?

3 MS. COOPER: Yes, sir. I believe that would
4 be his understanding, after speaking with him.

5 THE COURT: Okay. So you're saying your
6 client had a misunderstanding?

7 MS. COOPER: Based upon that, Judge, and I
8 did too. And perhaps it was part my fault because of
9 miscommunication.

10 And I have also been given the Deal case by
11 Ms. Redmond, which deals specifically with subsequent
12 convictions. But it was my understanding at the time
13 of the execution of the plea agreement that a
14 twenty-five year mandatory consecutive sentence would
15 not be imposed, that it would be twenty-five and ten
16 years. {sic} = between 5 - 10 yrs

17 And as I said, Judge, the plea agreement
18 states not less than five years for each of those
19 counts.

20 THE COURT: Now I'll hear your arguments as
21 to the objection. I'll hear from Probation first.

22 THE PROBATION OFFICER: Excuse me, Your
23 Honor? I'm sorry.

24 THE COURT: I'll hear your argument as to the
25 defendant's objections.

1 THE PROBATION OFFICER: Your Honor, it is my
2 understanding the defendant objects to the fact that
3 she was informed, or understood, that there would be a
4 not less than five and a not less than ten year
5 mandatory consecutive term of imprisonment imposed.
6 However, on April 11th of 2003, subsequent to the
7 defendant's arraignment and prior to his change of
8 plea, our office did a probation officer conference
9 guideline estimate, and when I did that I specifically
10 stated that in accordance with count six there would
11 be a twenty-five year or three hundred month
12 consecutive sentence imposed into any other case.

13 Count five stated that there would be a ten
14 year mandatory minimum sentence imposed at that time
15 because during that time I had not verified all the
16 information. And my understanding at that time, the
17 two weapons that were involved, one being a Tech nine
18 and one being an M eleven, I assumed they were both
19 semiautomatic assault weapons. So I took the higher
20 estimate at the probation officer conference.

21 When the change of plea occurred,
22 Ms. Redmond and myself met with Miss Cooper and the
23 defendant back in the detention holding cell for the
24 marshals. And I explained to him that since the
25 United States Department of Alcohol, Tobacco and

1 Firearms had determined one of the weapons not to be a
2 semiautomatic assault weapon, count five would be --
3 count four, I'm sorry, would be a five year
4 consecutive term but count six because it was a
5 subsequent conviction, it would still be a twenty-five
6 year consecutive sentence. And it was my
7 understanding that they understood that at the change
8 of plea.

9 THE COURT: Miss Cooper?

10 MS. COOPER: Judge, I made notes at the time
11 of that conference, and I believe this to be even in
12 Mr. Conly's handwriting and part of it in my
13 handwriting that part four initially was a ten year
14 consecutive sentence to any other sentence imposed.
15 And that's been marked down, and written above it is
16 five.

17 Count six was twenty-five years consecutive
18 to any other sentence imposed, and marked out as ten
19 years and place -- in place of twenty-five years is
20 ten years.

21 Additionally, Judge, I believe that this
22 particular case, if we look at the circumstances of
23 the case, the guns and the drugs that were charged to
24 my client were all obtained during one offense date
25 and time. These are not subsequent arrests or

1 subsequent crimes that were committed during a
2 different date. And as I said before, Judge, when you
3 talk about whether it is proper to impose an
4 additional twenty-five year sentence and you look at
5 the Deal case from the Supreme Court, that particular
6 case involving bank robbery was where a gentleman had
7 committed six different offenses for bank robbery.

8 In the instant case, here with
9 Mr. Jefferson, these guns were all obtained on the
10 same date and during the same arrest.

11 THE COURT: So the question is if I overrule
12 your objections, he would be looking at at least three
13 hundred months on count six, which would run
14 consecutive to any other sentence I gave him on the
15 the other counts.

16 MS. COOPER: Yes, sir, I believe that to be
17 correct.

18 THE COURT: Now I have these motions for
19 downward departure. How do they play into this?

20 MS. REDMOND: Judge, there is filed by myself
21 a motion for downward departure of three levels based
22 on his substantial assistance to the Government. And
23 I think I detailed it in the downward departure motion
24 in "ongoing investigations," particularly in the
25 Phenix City area involving firearms and drug dealing.

1 They impact in terms of really, Judge, the drugs, and
2 that would be the underlying sentence that would be
3 impacted.

4 I believe I also filed for the additional
5 point for acceptance of responsibility which would all
6 together bring him down six levels as to the guideline
7 ranges.

8 THE COURT: Okay. And assuming the objection
9 is overruled, that would give him a sentencing range
10 of what?

11 MS. REDMOND: I want to say twenty-six, Your
12 Honor.

13 THE PROBATION OFFICER: Yes, Your Honor. If
14 the Court granted the three level downward departure,
15 the new offense level would be twenty-six; based on
16 the criminal history category of three, his new
17 guideline range would be seventy-eight to ninety-seven
18 months with a new fine range of twelve thousand five
19 hundred to five million dollars.

20 THE COURT: Okay. But what about the
21 consecutive sentence?

22 THE PROBATION OFFICER: The guidelines, Your
23 Honor, I mean the downward departure motion, from my
24 understanding, only affects the guidelines sentence
25 because she's asking for a three level reduction. And

1 what you would do is take it off of the drugs because
2 there is a ninety-seven months or an original
3 guideline range of a hundred and eight to a hundred
4 and thirty-five months to work with.

5 The motion in accordance with 5K, which I
6 think it was filed with -- 5K1, only requested a
7 downward departure of three levels. That would, in
8 affect, give the statutory mandatory required
9 sentences under 18 U.S.C. 924(c). That's where we
10 come up with that, Your Honor.

11 THE COURT: So you're saying what then, as to
12 the three hundred months?

13 THE PROBATION OFFICER: It does not affect
14 that, no, Your Honor.

15 THE COURT: What is the defendant's position
16 as to the application of Deal?

17 MS. COOPER: Judge, I believe that Deal
18 stands for the proposition that in 1993 the Supreme
19 Court affirmed a case in which a defendant committed
20 about six bank robberies, and the Court imposed an
21 additional twenty year sentence in two through five of
22 those bank robberies, Judge, which resulted in a
23 sentence of a hundred and five years.

24 I would submit to this Court that the
25 distinction, one of the important distinctions between

1 the instant case and the Deal case is that there were
2 six separate offenses on six separate dates. And I
3 submit that that would lead the Supreme Court in
4 reasoning that the application of the subsequent
5 offense should be given to the defendant. Of course
6 there were three justices in that who disagreed, and
7 in the dissent strongly stated that the previous
8 federal law makes clear that the subsequent offense
9 which describes only those offense committed after a
10 prior conviction has become final.

11 But once again, Judge, I would submit to you
12 that the Deal case is totally different in that that
13 defendant committed six bank robberies on six
14 different occasions, and we're dealing today with one
15 instance, one search and one finding of weapons on one
16 occasion and not more than one.

17 THE COURT: How about there were two caches
18 of drugs, right?

19 MS. COOPER: There were drugs found in a
20 vehicle driven by my client, Judge. There were no
21 weapons found on my client or in the vehicle at the
22 time of the arrest. The weapons were found -- one
23 weapon, I believe, was found in a place of business
24 that his wife ran, and in their home. Weapons found
25 in the home. But it was all on the same date and

1 time. Same arrest.

2 THE COURT: And drugs were found where, now?

3 MS. COOPER: There were drugs found in a
4 vehicle that my client, that was the largest amount of
5 drugs that were obtained in a vehicle that my client
6 was driving on the date of the arrest. No weapons
7 or -- no weapons were found in the vehicle that he was
8 driving, nor were on his person at the time of the
9 arrest.

10 There was a business his wife was operating
11 in which a weapon was found, and later a search of her
12 home for two weapons I believe, Judge.

13 MS. REDMOND: If I can answer quickly the
14 question I think the Court posed as to just where were
15 the drugs found? The drugs were found in all three
16 locations. The car, the business and the home.

17 THE COURT: Okay. And you're saying that the
18 weapons in the car --

19 MS. REDMOND: Weapons are in the house and in
20 the residence.

21 THE COURT: House and the --

22 MS. REDMOND: I'm sorry. That's not what I
23 meant. The residence and the business, Your Honor.

24 THE COURT: Okay. And count four goes to the
25 drugs found where? Count four is the firearm

1 possession. And I assume you're claiming that's
2 connected with the separate drugs?

3 MS. REDMOND: That's the business.

4 THE COURT: And count six?

5 MS. REDMOND: There were two weapons found in
6 the home, one along with drugs. One of which ends up
7 being an assault weapon. And so they were grouped
8 together, the two weapons that were found in the home.

9 THE COURT: Okay.

10 MS. COOPER: Judge, it's my recollection, if
11 I'm correct, that the amount of drugs approximately
12 found in the vehicle was five hundred grams. The
13 amount of drugs found at the home was sixty-five
14 grams. And there was no charges of any drugs found in
15 the shop because I think it was a minimal amount of
16 residue, if I'm correct.

17 THE COURT: Well I really see two issues
18 here. The first one is whether your client should be
19 allowed to withdraw his plea because he had a
20 misunderstanding. And the second one is whether count
21 six should be treated as a subsequent offense.

22 MS. COOPER: Yes, Your Honor.

23 THE COURT: Does your client wish to withdraw
24 his plea? He now understands that he is subject,
25 depending upon the Court's findings, to not less than

1 twenty-five years, and those are consecutive years
2 under count six. Is he making a claim to withdraw his
3 plea, or not? I'll hear you as to that.

4 I'm not saying I'm going to allow him to
5 withdraw his plea, I just want to know what his claim
6 is.

7 THE DEFENDANT: No, sir.

8 MS. COOPER: No, sir.

9 THE COURT: Pardon me?

10 MS. COOPER: No, sir.

11 THE COURT: With the understanding that count
12 six does carry a sentence of not less than twenty-five
13 years consecutive to any other sentence you might
14 receive for the other counts, you still wish to
15 continue with your plea?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Pardon me?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Okay. Because of the gravity of
20 this decision, I'm going to ask the clerk to swear you
21 in.

22 (Whereupon, the defendant was duly sworn by
23 the courtroom deputy clerk.)

24 THE COURT: Now do you understand that having
25 been sworn, your answers to my questions will subject

1 you to the penalties of perjury or of making a false
2 statement if you fail to answer the questions
3 truthfully?

4 A Yes, sir.

5 THE COURT: Are you now under the influence
6 of any drugs or alcohol?

7 A No, sir.

8 THE COURT: Have you recently been
9 hospitalized or treated for any narcotics addiction?

10 A No, sir.

11 THE COURT: Are you able to read, write and
12 understand the English language?

13 A Yes, sir.

14 THE COURT: And have you recently seen a
15 physician or a psychiatrist?

16 A No, sir.

17 THE COURT: Are you suffering from any mental
18 or physical disability?

19 A No, sir.

20 THE COURT: Now, Miss Cooper, do you have any
21 reason to doubt his competency to reaffirm his plea at
22 this time?

23 A I do not, Your Honor.

24 THE COURT: Does the Assistant U. S.
25 Attorney?

1 MS. REDMOND: No, sir.

2 THE COURT: Based upon the representations
3 made to the Court, the Court finds that the defendant
4 is competent to reaffirm his guilty plea.

5 As I stated before, Mr. Jefferson, count six
6 of the indictment does carry a potential sentence of
7 not less than twenty-five years, which would be
8 consecutive to any sentence you receive on any other
9 count. You understand that?

10 A Yes, sir.

11 THE COURT: Okay. Now with that
12 understanding, do you still wish to maintain your plea
13 of guilty as I indicated earlier?

14 A Yes, sir.

15 THE COURT: Now has anyone promised you
16 anything, or threatened you or threatened anyone else
17 in order to force you to reaffirm your plea at this
18 time? Do you understand what I'm asking?

19 A Yes, sir.

20 THE COURT: You're hesitating with your
21 answer.

22 A Yes, I was.

23 THE COURT: What were you promised?

24 A Well, I was threatened if I didn't take the plea
25 they would take my wife.

1 THE COURT: Well other than the plea
2 agreement, did anyone threaten you?

3 A No, sir.

4 THE COURT: You know you can still have a
5 trial.

6 A Right.

7 THE COURT: But other than the plea agreement
8 itself, did anyone threaten you or threaten anyone
9 else?

10 A No, sir.

11 THE COURT: Now with that understanding, do
12 you wish to reaffirm your plea in this case?

13 A Yes, sir.

14 THE COURT: Okay. Now I guess, then, the
15 issue comes down to whether count six should be
16 treated as a consecutive sentence.

17 MS. COOPER: Yes, sir.

18 THE COURT: By the way, the Court does accept
19 the reaffirmation of his guilty plea.

20 It's now noon. I hate to ask you to come
21 back, Miss Cooper, but considering the gravity of
22 this, I think we're going to have to come back at
23 one-thirty. I'll let you know something about the
24 Deal matter.

25 MS. COOPER: Thank you, Judge.

1 THE COURT: Okay.

2 (Whereupon, a recess was taken.)

3 THE COURT: Miss Cooper, would you come
4 forward with the defendant.

5 MS. COOPER: Yes, sir.

6 THE COURT: Miss Cooper, unfortunately this
7 case presents a very difficult issue. And as I'm sure
8 you'd firmly agree, the amount of time we're talking
9 about here is quite a lot. It's twenty years. There
10 is some circuit law to support your position, and
11 there is some circuit law to support the Government's
12 position on how to read Deal. I'm just going to have
13 to take more time and digest this a little bit more.

14 I regret having to call you back, but I
15 think your client is entitled to have a more
16 thoughtful resolution of this issue. And either way I
17 go, I suppose will go up to the Eleventh Circuit and
18 they will have to resolve it. I'd rather have given
19 my best shot at it.

20 MS. COOPER: Yes, sir.

21 THE COURT: If I was to rule against you, I
22 would strongly suggest that you appeal it.

23 MS. COOPER: Certainly.

24 MS. REDMOND: Judge, if I may, for just a
25 moment? In order to help the Court reach some

1 resolution, I understand what the Court is saying that
2 you want to take that into consideration.

3 There is another case that the Government
4 would like to provide, and it goes solely to the
5 question of the understanding of second or subsequent
6 convictions. And I think in relation to the argument
7 that the Defense is putting forward, that because when
8 you're dealing with Deal and subsequent cases, you're
9 dealing with counts that occurred on basically
10 separate offenses just now rooted together. There is
11 a case, United States of America vs. Scyrus Dion
12 Hedert that we will submit to the Court.

13 Miss Cooper has had an opportunity to read
14 that case, and if the Court would allow, I'd like to
15 submit that for the Court's consideration.

16 THE COURT: Certainly. Any time you have
17 some additional case authority I will gladly accept
18 it.

19 Let me ask you this just before we recess.
20 During the plea agreement was there any sort of
21 clarification as to the relationship between the drugs
22 and the business and the drugs at home?

23 In other words, and I'm trying to give an
24 example, you could have one package of drugs, let's
25 say, that you bought, and you split it in half, and

1 you took half of it home and half you took to work, so
2 we have one clear connection that we have one
3 particular set of drugs that we're talking about, or
4 you could have a drug situation in which you might
5 have a marijuana operation growing out of your
6 business and you might have a cocaine operation
7 growing out of your home. I'm using extremes,
8 obviously. And you could almost view the two
9 instances as completely separate offenses, and any
10 guns connected to those offenses obviously could be
11 viewed as separate.

12 What I'm not getting here is a real feeling
13 for what connection, if any there was, or what lack of
14 connection, if any there was, here. The question is
15 both ways. And I don't know whether at the time of
16 the guilty plea or later there is any evidence that
17 would enlighten me on that.

18 MS. REDMOND: Judge, if I might? It was, and
19 remains the Government's contention that, and I
20 understand that the Court is working with a lack of
21 information just due to the nature of the federal
22 proceedings in this case, the facts establish that the
23 defendant had driven -- the officers were doing
24 surveillance and had watched the defendant ride up
25 having left his home.

1 And, remember, we're dealing with three
2 separate sets of drugs; drugs at the home, drugs in
3 the car, and drugs in the business, which the
4 defendant never entered on that evening. So we're
5 dealing with -- and so that the Court is aware, I
6 think the facts of the case establish that, and that
7 this was part and parcel of the suppression hearing,
8 that when the officers approached the vehicle, they
9 smelled a strong smell of the chemicals used to cut
10 cocaine. And in a bag was the cut cocaine.

11 So it is believed that having come from home
12 where there is additional powder cocaine, that the
13 defendant was in the process of -- that the cocaine in
14 the car came from the home, which is separate and
15 distinct since he never entered the business from the
16 drugs that are located along with the weapon.

17 THE COURT: Two things here. The drugs in
18 the home are powder cocaine, is that correct?

19 MS. COOPER: Yes, sir.

20 MS. REDMOND: Yes, sir.

21 THE COURT: And you're saying the drugs in
22 the car was going to be turned into crack, or
23 something like that?

24 MS. REDMOND: That is our belief.

25 THE COURT: The drugs in the business were

1 what?

2 MS. COOPER: Residue, Your Honor.

3 MS. REDMOND: We have marijuana and cocaine
4 residue.

5 THE COURT: Do you have marijuana in the
6 home?

7 MS. REDMOND: No. There is no marijuana in
8 the home.

9 THE COURT: How much marijuana is in the
10 business?

11 MS. COOPER: None, Judge.

12 THE COURT: I thought you said there was
13 marijuana.

14 MS. REDMOND: I thought there was, Judge.
15 Just a minute.

16 (Whereupon, Ms. Redmond examined various
17 documents at counsel table.)

18 THE COURT: Was he ever charged with
19 marijuana?

20 MS. COOPER: No, Your Honor. No, sir.

21 THE COURT: Well I'm still trying to look at
22 the totality of the circumstances.

23 MS. COOPER: Additionally, Judge, we don't
24 believe there was any evidence presented during any of
25 the hearings in this matter that would lead a

1 reasonable person to believe that Mr. Jefferson had
2 recently come from his home prior to coming to the
3 business. That evidence was not admitted in court.

4 THE COURT: Now there was a suppression
5 hearing?

6 MS. COOPER: Yes, sir.

7 THE COURT: That was before which magistrate
8 judge?

9 MS. REDMOND: Judge McPherson, Your Honor.

10 THE COURT: Did I rule on the suppression
11 motion?

12 MS. COOPER: I believe so, Your Honor.

13 THE COURT: I don't think I had a subsequent
14 hearing on that.

15 MS. COOPER: No, sir.

16 MS. REDMOND: No, sir, you adopted the
17 findings of the magistrate judge.

18 THE COURT: Is there any problem with my
19 considering that evidence also in resolving this?

20 MS. REDMOND: The Government would have no
21 objection.

22 MS. COOPER: I'd have no objection.

23 THE COURT: I'll consider that transcript as
24 well.

25 Now getting back to the marijuana, was there

1 any marijuana in the business?

2 MS. REDMOND: I apologize, Your Honor. Let
3 me go back for just a moment. There was crack cocaine
4 located in the home, along with a digital scale. And
5 I apologize, Your Honor, I don't know where it was in
6 my head marijuana. There was cocaine residue in the
7 business.

8 THE COURT: Okay. Only cocaine residue in
9 the business.

10 MS. COOPER: That's my recollection, Judge.

11 THE COURT: Now where was the cocaine residue
12 found in the business?

13 MS. REDMOND: It was found in plastic bags in
14 the garbage can next to the shelf, for lack of a
15 better description, where the gun was located. And
16 additional plastic bags.

17 THE COURT: Okay. Was there any evidence
18 that the plastic bags found in the business were in
19 any way similar to plastic bags in the home, or
20 anything like that?

21 MS. REDMOND: I believe there wasn't any
22 evidence that was presented to Judge McPherson that
23 they had in any way, shape or form matched the bags
24 that were located.

25 THE COURT: In other words, is there any

1 evidence that the drugs in the business may have come
2 from the drugs in the home?

3 MS. COOPER: To my recollection, no, it was
4 not presented. No, sir.

5 MS. REDMOND: No, sir, I would agree with
6 that.

7 THE COURT: Is there any way to find that
8 out? Did you ask the police officers these questions?

9 MS. REDMOND: If the bags matched up in any
10 way?

11 THE COURT: Well, no. More broadly, was
12 there any evidence that the drugs may have been -- the
13 drugs in the business may have had any relationship to
14 the drugs at home, or come from the drugs -- is there
15 any evidence of that one way or the other, even an
16 absence of evidence?

17 MS. REDMOND: Of course the Government's
18 contention would be that they were, in fact, selling
19 crack cocaine out of the business, which is why they
20 were doing surveillance on the business. They had
21 several individuals who they had arrested who said
22 that they had bought from out of that business and
23 were selling on behalf of the defendant.

24 THE COURT: Okay. And the crack in the
25 house, they were not selling it out of the house?

1 MS. REDMOND: According to the information
2 received from those arrested individuals, there was
3 nothing that indicated that they were going to the
4 house to get drugs to sell or to use.

5 THE COURT: Anything else from Probation?

6 THE PROBATION OFFICER: No, Your Honor. We
7 rely on the case law we submitted and our arguments.

8 THE COURT: Very good. I'll let you know
9 when sentencing is reset.

10 MS. COOPER: Thank you, Your Honor.

11 THE COURT: Thank you very much.

12 MS. REDMOND: Your Honor, may I just make one
13 request?

14 THE COURT: Certainly.

15 MS. REDMOND: I will be out of the state as
16 of December 22nd.

17 THE COURT: Let Miss Carnes know that so if
18 I inadvertently do that, she'll bring to it my
19 attention.

20 MS. REDMOND: Thank you Your Honor.

21 THE COURT: She's good at bringing things to
22 my attention.

23 You are excused.

24 (Whereupon, the proceedings were concluded.)
25

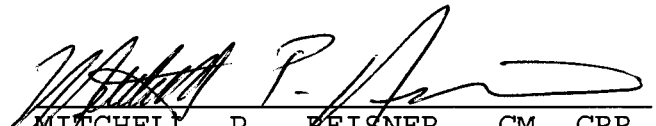
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COURT REPORTER'S CERTIFICATE

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter as prepared by me to the best of my ability.

I further certify that I am not related to any of the parties hereto, nor their counsel, and I have no interest in the outcome of said cause.

Dated this 15th day of March 2004.


MITCHELL P. REISNER, CM, CRR,
Official US Dist. Court Reporter
Registered Professional Reporter
Certified Real-Time Reporter